

803 KAR 25:150. Workers' compensation alternative dispute resolution systems.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.260, 342.277

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.277 requires the Executive Director of the Office of Workers' Claims to promulgate administrative regulations putting forth the mechanism and criteria by which the Office of Workers' Claims may recognize as valid and binding a collective bargaining agreement between an employer and a recognized or certified exclusive bargaining representative. KRS 342.260 requires the Executive Director of the Office of Workers' Claims to promulgate administrative regulations as are necessary to carry on the work of the Office of Workers' Claims and to implement the provisions of KRS Chapter 342. The function of this administrative regulation is to establish a mechanism by which the executive director may recognize as valid and binding a collective bargaining agreement between an employer and a recognized or certified exclusive bargaining representative.

Section 1. Definitions. (1) "ADR" means alternative dispute resolution.

(2) "Collective bargaining agreement" means an agreement between an employer and a recognized or certified exclusive bargaining representative concerning workers' compensation claims and the resolution of workers' compensation disputes.

(3) "Certification" means the order issued by the executive director advising the employer and the recognized or certified exclusive bargaining representative that a program for alternative dispute resolution of disagreements as to entitlement to workers' compensation benefits for employees of the employer has been approved.

(4) "Recognized or certified exclusive bargaining representative" means the entity recognized or certified by the employees of an employer as the employees' representative for purposes of resolution of disputes relating to the employees' entitlement to workers' compensation benefits.

(5) "ADR plan administrator" means the person or entity designated by an employer and the recognized exclusive bargaining representative as the day-to-day administrator of the program for resolutions of disputes as to entitlement to workers' compensation benefits and the amount, manner of payment, and duration of benefits for work-related injuries and occupational diseases.

Section 2. Application; Plan Requirements. (1) Any employer and the recognized or certified exclusive bargaining representative, through their designated ADR plan administrator may apply for certification of a plan which supplements, modifies, or replaces the provisions of KRS Chapter 342 that relate to the resolution of disputes. The format for the application is set forth in Appendix A. The application and appended materials shall demonstrate that:

(a) The employer and the recognized or certified exclusive bargaining representative have entered into a binding collective bargaining agreement adopting the ADR plan for a period of no less than two (2) years and appointing the ADR plan administrator for no less than a period of one (1) year;

(b) Contractual agreements have been reached with the employer's workers' compensation carrier, group self-insurance fund, and any excess carriers relating to the ADR plan.

(c) Procedures have been established by which claims for benefits by employees will be lodged, administered and decided while affording procedural due process.

(d) The plan has designated forms upon which claims for benefits shall be made. Such forms shall comport substantially with the Procedure for Adjustments of Claim forms prescribed by 803 KAR 25:010.

(e) The system and means by which the employer's obligation to furnish medical services under KRS 342.020 and vocational rehabilitation and retraining benefits under KRS 342.732 and

342.710 shall be fulfilled and providers selected.

(f) The method by which mediators or arbitrators are to be selected.

(g) The decision of a mediator or arbitrator upon a referred matter shall have the same force and effect as that of an administrative law judge under KRS Chapter 342.

(h) Income benefits for disability will be no less than those provided by KRS Chapter 342.

(2) The executive director shall review the application within thirty (30) days and by written order served upon the ADR plan administrator notify that the plan had been certified, denied, or needs to be amended, affording the applicant thirty (30) days in which to make suggested amendments. Any order denying an application shall specifically set forth the basis of the denial.

(3) Any applicant aggrieved by the order of the executive director denying an application may within fifteen (15) days of the date of that order file with the executive director a request for hearing setting forth a concise statement of the reasons why the executive director's decision should be changed. The executive director shall in no less than thirty (30) days schedule and hold a hearing pertaining to the matter. Within ten (10) days of the conclusion of the hearing, the executive director shall issue a final order adopting, modifying or reversing the prior order relative to the application. An applicant aggrieved by that order may appeal to the Franklin Circuit Court within thirty (30) days of the entry of the order.

Section 3. Employees' Claims for Workers' Compensation Benefits. (1) Claims for benefits shall be filed with the ADR plan administrator within those periods of limitation prescribed by KRS Chapter 342. Within ten (10) days of the filing of a claim, the plan administrator shall serve a copy of the claim application upon the executive director, who shall maintain records of all ADR claims and resolutions.

(2) Settlements of claims presented to the plan administrator shall be evidenced by a settlement agreement substantially comporting with Form 110-0, 110-I, or 110-R as adopted at 803 KAR 25:010. All such settlements shall be filed with the ADR plan administrator, who within ten (10) days shall forward a copy to the executive director for recording.

(3) Upon assignment of claims, unless settled, mediators and arbitrators shall render final orders containing essential findings of fact, rulings of law and referring to other matters as pertinent to the questions at issue. The ADR plan administrator shall maintain a record of the proceedings.

Section 4. Workers' Compensation Funds Participation. (1) Participation by the special fund in any claim pending before the ADR plan administrator, a mediator, or arbitrator shall be sought as soon as possible after the existence of grounds for special fund liability is known. Written request for participation should be addressed to: Director of Division of the Workers' Compensation Funds, ATTN: ADR Clerk, Department of Labor, 1047 U.S. 127 South, Frankfort, Kentucky 40601. The request shall:

(a) Specify the factual basis of alleged special fund liability;

(b) Be accompanied by a copy of all written materials pertinent to the claim held by the requesting party and any material discoverable under KRS Chapter 342; and

(c) Be accompanied by a current medical waiver and consent form executed by the claimant.

(2) Within fifteen (15) days following receipt of a request for participation in a pending ADR claim, the director of the special fund shall notify the parties, in writing, of whether it elects to join as a party in the ADR proceedings. A failure of the director of the special fund to respond to a request for participation shall be deemed a negative election.

(3) If the director of the special fund declines to participate in the ADR proceedings, the claimant, the employer, and the employer's insurance carrier shall retain the right to proceed against the special fund in the manner prescribed by KRS Chapter 342. Any claim against the special fund shall be filed with the Office of Workers' Claims within thirty (30) days after an award or set-

tlement through ADR becomes final.

Section 5. Appeals. (1) A party to an ADR proceeding may appeal a final order to the Workers' Compensation Board in the same manner and in the same time frame as prescribed for an appeal from the decision of an administrative law judge. A copy of the notice of appeal shall be served by the appealing party on the plan administrator, who shall within twenty (20) days file with the executive director a copy of the record of the proceedings before the mediator or arbitrator.

(2) The final order of the mediator or arbitrator shall be affirmed upon review unless the Workers' Compensation Board determines:

- (a) The mediator or arbitrator exceeded the authority vested by applicable law;
 - (b) The final order is incomplete, ambiguous or so contradictory as to make implementation impracticable;
 - (c) The mediator or arbitrator was patently biased or partial;
 - (d) The mediator or arbitrator refused to admit reliable material or probative, but not redundant, evidence, which if accepted would tend to change the outcome of the proceeding; or
 - (e) The final order of the mediator or arbitrator was procured by fraud.
- (3) No issue or point of error shall be raised before the board which was known or should have been known below, but was not raised before the arbitrator.

Section 6. Reporting Requirements. Annually, each ADR plan administrator shall submit a report to the executive director containing the following information:

- (1) The number of employees within the ADR program;
- (2) The number of occurrences of work-related injuries or diseases;
- (3) The breakdown within the ADR program of injuries and diseases treated;
- (4) The total amount of disability benefits paid within the ADR program;
- (5) The total medical treatment cost paid within the ADR program;
- (6) The number of claims filed within the ADR program; and
- (7) The disposition of all claims.

APPENDIX A APPLICATION FOR CERTIFICATION OF AN ALTERNATIVE DISPUTE RESOLUTION PROGRAM

APPLICATION FOR CERTIFICATION

- (1) Employer's name, address, and telephone number.
- (2) Recognized or certified exclusive bargaining representative's name, address, and telephone number.
- (3) ADR plan administrator's name and address.
- (4)(a) Contract adopting ADR plan and appointing the ADR plan administrator.
- (b) Contract between employer and employer's workers' compensation carrier, group self-insurance fund, and any applicable excess carriers.

(c) Description of procedures by which claims for benefits are to be lodged, administered and decided.

(d) Forms substantially comporting with 803 KAR 25:010.

(e) Description of procedure by which the employer is to furnish medical services, vocational rehabilitation, and retraining benefits, and method of selecting providers.

(f) Description of the method by which mediators or arbitrators are to be selected.

(g) A statement demonstrating that the decision of a mediator or arbitrator shall have the same force and effect as that of an administrative law judge.

(h) A statement that income benefits for disability will be no less than those provided by KRS Chapter 342.

Employer Signature

Date: _____

Subscribed and Sworn to before me by _____, on this the _____ date of _____, 19____.

Notary Public

My _____ Commission _____ expires _____, 19____.

Exclusive Bargaining Representative

Signature

Date: _____

Subscribed and Sworn to before me by _____, on this the _____ date of _____, 19____.

Notary Public

My _____ Commission _____ expires _____, 19____.

ADR PLAN ADMINISTRATOR SIGNATURE

Date: _____

Subscribed and Sworn to before me by _____, on this the _____

_____ date of _____, 19_____.

Notary Public

My _____ Commission _____ ex-
pires _____, 19_____.

(22 Ky.R. 656; 913; eff. 10-19-1995; TAm eff. 8-9-2007; Crt eff. 3-29-2019.)